IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15351 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MALI RAMAJI CHELAJI

Versus

MAMLATDAR & KRUSHIPANCH (TENANCY) DEESA

Appearance:

1. Special Civil Application No. 15351 of 2004

MR CL SONI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,3-5

NOTICE NOT RECD BACK for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/02/2005

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the

legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 24.4.2000 passed in Revision Application No.126 of 1992 in dismissing the same and confirming the order passed by the respondent No.2 - Deputy Collector dated 28.11.1991 passed in Ganot Appeal No.24 of 1991 in dismissing the same and confirming the order passed by the Mamlatdar and ALT, Deesa dated 27.2.1989 in Ganot Case No.134 of 1988. The petitioner has also challenged the legality and validity of the order passed by the Gujarat Revenue Tribunal dated 15.2.2002 in review application No.TEN.C.A. NO.44 of 2000.

.RS 2.

#. It appears from the record that the proceedings came to be initiated by the Mamlatdar & ALT, Deesa for breach of Section 63 of the Bombay Tenancy Act with regard to land bearing Survey No.116 admeasuring Acre-8-14 Gunthas situated at village Ranpur, Taluka-Deesa. The Mamlatdar and ALT, Deesa by its order dated 27.2.1989 passed the order declaring the sale between the original land owner and the predecessor in title as invalid since the same was in breach of Section 63 of the Bombay Tenancy Act and proceedings were directed to be initiated under Section 84-C of the Bombay Tenancy Act. Thereafter, the proceedings came to be initiated by the Mamlatdar and ALT, Deesa under Section-84-C of the Bombay Tenancy Act being Ganot Case No.335 of 1989 and the Mamlatdar & ALT by order dated 1.2.1991 directed to take the land in question under the Government head by observing that the parties are not ready to restore the position prior to the sale transaction. At this stage, it is required to be noted that so far as the order passed by the Mamlatdar and ALT, Deesa dated 27.2.1989 declaring the transaction as invalid in breach of Section 63 of the Bombay Tenancy Act is concerned, the same was never challenged by anybody. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Deesa dated 1.2.1991 passing the order under Section 84-C of the Bombay Tenancy Act, the petitioner preferred Ganot Appeal NO.24 / 1991 before the Deputy Collector, Palanpur who by order dated 28.11.1991 dismissed the said appeal confirming the order passed by the Mamlatdar and ALT dated 1.2.1991. Being aggrieved and dissatisfied with the said order, the petitioner preferred revision application before the Gujarat Revenue Tribunal being Review Application No.TEN.B.A./126 of 1992, which came to be dismissed by the Tribunal by its judgment and order dated 24.4.2000. It is also required to be noted at this stage that the said judgment and order passed by the Gujarat Revenue Tribunal came to be accepted by the petitioner and the

same was not carried further before the higher forum. It also appears from the record that after aforesaid review application came to be disposed of by the Gujarat Revenue Tribunal, one circular came to be issued by the State Government in its Revenue Department dated 20.11.2000 with regard to breach of Section 63 of the Bombay Tenancy Act read with Section 84-C of the Act, wherein it is stated that if the proceedings are pending before any authority with regard to breach of Section 63 of the Bombay Tenancy Act to the effect that purchaser is not an agriculturist within eight kilometers radius, then in that case, the proceedings are required to be abated and the possession is required to be continued with the purchaser agriculturist. To get benefit of the aforesaid Government Circular dated 20.11.2000, the petitioner preferred Review Application No.TEN.C.A./44/2000 and the same came to be dismissed by the Gujarat Revenue Tribunal by its order dated 13.5.2002. Being aggrieved and dissatisfied with the order passed by the Gujarat Revenue Tribunal dated 13.5.2002 passed in Review Application No.44/2000, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

#. At this stage, it is the case of the petitioner that this is a petition under Article 226 as well as Article 227 of the Constitution of India as the present special civil application is filed for getting the benefit of the Government Circular dated 20.11.2000.

#. Shri C.L.Soni, the learned advocate appearing on behalf of the petitioner has submitted that so far as the order passed by the Gujarat Revenue Tribunal in not granting the benefit of Government Circular dated 20.11.2000 is concerned, the same is contrary to the said Government Circular and the object of the said circular. It is submitted that in Clause (1) of the said Government Circular, it is stated that if a breach is alleged under Section 63 of the Bombay Tenancy Act with regard to transaction which has taken place prior to 6.10.1995, in that case, proceedings under Section 63 are required to to be closed and therefore, it is submitted that when the transaction in question was prior to 6.10.1995, the Tribunal ought to have given benefit of aforesaid Government Circular dated 20.11.2000 and ought to have passed the order to close the proceedings. The aforesaid argument is required to be rejected outright. In Clause (3) of the aforesaid Government Circular it is specifically mentioned that in a case where final decision is already taken under Section 63 and an order is already passed to take the said land under State

Government Head, meaning thereby, the Government circular dated 20.11.2000 would be applicable only in the case where the litigation is pending before the authority and / or appropriate forum. In the present case, there was no litigation pending on the day on which the aforesaid Government Circular dated 20.11.2000 came to be issued. The revision application filed by the petitioner came to be dismissed on 24.4.2000 and considering the aforesaid facts and circumstances, the tribunal has rightly rejected the contention of the petitioner with regard to getting the benefit of Government Circular dated 20.11.2000.

#. Shri C.L.Soni, the learned advocate appearing on behalf of the petitioner has submitted that so far as the challenge to the original orders are concerned, the same also require to be quashed and set aside as the exercise of powers by the Mamlatdar and ALT was beyond the reasonable period and the same has not been considered by the Gujarat Revenue Tribunal. At this stage, it is required to be noted that the said point was also raised by the petitioner before the Gujarat Revenue Tribunal in review proceedings and considering the fact that in the original order passed in revision application, there was specific finding given by the tribunal that exercise of powers by the Mamlatdar and ALT was within a period of two years and the same was in exercise of the powers within reasonable time and therefore, negativing the said contention the review application came to be dismissed. It is also required to be noted that so far as the judgment and order passed by the Gujarat Revenue Tribunal dated 24.4.2000 passed in Review Application being TEN.B.A.No.126 of 1992 is concerned, the petitioner never challenged the said order earlier and only after the aforesaid Government Circular dated 20.11.2000 is issued, the review application came to be filed mainly for getting the benefit of the aforesaid Government Circular. Under the circumstances, the petitioner now cannot challenge the original orders which have become final. All three authorities below have concurrently found that there is breach of Section 63 of the Bombay Tenancy Act and proceedings came to be culminated into proceedings under Section 84-C of the aforesaid Act. Ultimately, this is the petition under Article 227 of the Constitution of India and so far as the orders passed by the Mamlatdar and ALT, Deputy Collector and the Gujarat Revenue Tribunal are concerned, there is no jurisdictional error much less an error of law committed by the all the authorities below requiring an interference of this Court in exercise of the powers under Article 227 of the Constitution of India.

#. In view of the aforesaid discussion, this Court is of the opinion that there is no substance in the present special civil application and the same is rejected accordingly.

Rule is discharged with no order as to costs.

Date : 9.2.2005 [M.R.Shah, J.]
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